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Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-302

ANNIE NELL RATLIFF and HENRY RATLIFF,
PETITIONERS,

versus

COOPER LABORATORIES, INC., RESPONDENT

ALICE W. NICHOLS, PETITIONER,

versus

STERLING DRUG COMPANY, INC., A CORPORATION,
RESPONDENT

RETURN TO A PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF CASE

RATLIFF CASE

The Petitioners in June of 1963, while a resident of Florida, consummed in Florida a drug manufactured by Vitamix Pharmaceutical Company which was prescribed for her by a Florida physician. It is the contention of the Petitioners as a result of ingesting this product she received personal injuries which entitled her to recover damages from this Defendant.

On February 29, 1968, Vitamix merged with the Respondent Cooper Laboratories, Inc. This suit was instituted in the District Court of South Carolina against Cooper Laboratories in May of 1969, five years and eleven

months after the Petitioners cause of action arose because the Florida Statute of Limitations had expired.

The Petitioners have never resided in nor had any contact whatsoever with South Carolina.

The Petitioners' attorney attempted to obtain jurisdiction over the Defendant Cooper Laboratories, Inc. by service on the South Carolina Secretary of State since the Respondent had no agents for service designated in South Carolina. Claimed jurisdiction is based upon Cooper Laboratories' activity in South Carolina which include sales of approximately seven-tenths (7/10) of one percent (1%) of its total sales in 1968 and five-tenths (5/10) of one percent (1%) of its total sales in 1969. Since the South Carolina six year statute ran on June 10, 1969, the sales figure for 1969 should be limited to that date. This would substantially reduce the five-tenths (5/10) of one percent (1%). These sales were made through mail directly to dealers or wholesalers in South Carolina. The Respondent exercised no control over these dealers and they in no way act on behalf of the Respondent. Further, all goods are shipped with title transferring at the shipping point in Mystic, Connecticut. The only other activity that can be attributed to South Carolina is the mailing of literature and promotional material to approximately six hundred fifty (650) doctors who may be on the Respondent's mailing list. This Respondent owns no real or personal property in South Carolina, maintains no bank accounts, and has no officers, employees or salesmen living or soliciting business in South Carolina, owns no warehouses, advertises in no directories, does not franchise nor license dealers and maintains no control or supervision over the independent wholesalers and retailers who purchase its products. The Respondent does advertise in medical journals which undoubtedly have circulation in South Carolina, but does not

exhibit in any sort of displays at medical conventions in South Carolina.

NICHOLS CASE

According to the Complaint the Petitioner on or about November 22, 1965, and for a number of years prior thereto purchased and ingested a drug known as Aralen which she alleges caused her certain injuries. Petitioner is and at all times was a resident of Indiana, the drug was taken in Indiana, and the injuries alleged occurred in Indiana. Respondent, a drug manufacturer, has its principal place of business in New York. It owns no property and maintains no inventory in South Carolina. It does have five detail men who live in South Carolna whose prime function is the promotion of drugs manufactured by the Respondent not the sale of them. It is qualified to do business in South Carolina.

The District Court denied the Respondent motions to dismiss the actions on the grounds that the Court lacked jurisdiction. The Court of Appeals reversed the decision of the District Court asserting since the Respondents were not "amenable to *in personam* jurisdiction in South Carolina, the motions to set aside service of process and to dismiss the complaint should have been granted."

REASONS FOR DENYING THE WRIT

The decision of the Court of Appeals is in accord with the applicable decisions of this Court.

Because South Carolina has extended its service of process law to the maximum applicable limits allowed by *International Shoe v. State of Washington,* 326 U. S. 310, the question of jurisdiction becomes one of due process which is solely a federal question not controlled by state law. *Pulson v. Am. Rolling Mills,* 170 F. (2d) 193; *Bowman v. Curt G. Joa,* 361 F. (2d) 706.

The Supreme Court in *International Shoe* established a flexible rule for determining jurisdiction.

> "It is evident that the criteria by which we mark the boundary line between those activities which justify this objection of a corporation to suit and those which do not cannot be simply mechanical or quantitative. The test is not merely, as has sometimes been suggested, whether the activity, which the corporation has seen fit to procure through its agents in another state, is a little more or a little less . . . Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws of which it was the purpose of the Due Process Clause to insure. That clause does not contemplate that a state may make a binding judgment *in personam* against an individual or corporate defendant with which the state has no contact, ties or relations."

It was noted by this Court in *McGee v. International Life Insurance Company,* 355 U. S. 220, 2 Law Ed. (2d) 223, a trend of expanding personal jurisdiction over a non-resident. However in *Hanson v. Denckla,* 357 U. S. 235, 2 Law Ed. (2d) 1283, the Court still recognized there were limits to this expansion:

> "But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on personal jurisdiction of a state court (cites). Those restrictions are more than a guaranty of immunity from inconvenience of distant litigation. They are a consequence of territorial limitation on the power of the respective states. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contact' . . . It is essential in each case that there be some act by which the defendant **purposefully** avails itself of the privilege of conducting activities within the forum State, thus invoking benefits and protection of its laws." (Emphasis ours.)

More contacts are required for the assumption of jurisdiction by the state than mere solicitation of sales. *Green v. Chicago, Burlington & Quincy Railroad Company,* 205 U. S. 530, 27 S. Ct. 595, 51 L. Ed. 916.

All other circuits are in accord with the opinion of the Fourth Circuit. *Seymour v. Park Davis & Company,* 423 F. (2d) 584 (First Circuit 1970); *McInnes v. Fontainbleu Hotel Corp.,* 257 F. (2d) 832 (Second Circuit 1958); *Partin v. Michaels Art Bronze Company, Inc.,* 202 F. (2d) 541 (Third Circuit 1953); *Curtis Publishing Company v. T. B. Birdsong,* 360 F. (2d) 344 (Fifth Circuit 1966); *Velandra v. Regie Nationale Des Usines Renault,* 336 F. (2d) 292 (Sixth Circuit 1964); *Minnesota Mining and Manufacturing Company v. International Plastic Corporation,* 159 F. (2d) 554 (Seventh Circuit 1947); *Grantham v. Challenge-Cook Brothers, Inc.,* 420 F. (2d) 1182 (Seventh Circuit 1969); *Jennings v. McCall Corporation,* 320 F. (2d) 64 (Eighth Circuit 1963); *L. D. Reeder Contractors of Arizona v. Higgins Industries, Inc.,* 265 F. (2d) 768 (Ninth Circuit 1959); *Anderson v. Shiftlett,* 435 F. (2d) 1036 (Tenth Circuit 1971).

The opinion of the Court below is in accord with applicable decisions of this Supreme Court and the Courts of Appeal.

The issues settled by the opinion of the Court of Appeals are not ones of important nationwide concern which need to be settled by this Court.

The Petitioners contend the Court of Appeals expanded the concept of *International Shoe* and *Perkins v. Benquet Consolidated Mining Co.,* 342 U. S. 437, 96 L. Ed. 485, by making a distinction between Petitioners who are residents or citizens of the forum state and those who are neither residents nor citizens on identical causes of action against identical foreign corporations. Petitioners con-

tend the Court placed substantial reliance upon the lack of attachment of the Petitioners to the forum.

This rule finds the acceptance of the Supreme Court in *International Shoe v. State of Washington, supra; Hanson v. Denckla, supra,* and in opinions of the Courts of Appeal who have had this issue before them. *Seymour v. Parke Davis & Co., supra, Partin v. Michaels Art Bronze Company, supra, Curtis Publishing Co. v. T. B. Birdsong, supra, Jennings v. McCall, supra.* As said in *International Shoe:*

> ". . . the activities of the corporation there have not only been continuous and systematic **but also give rise to the liabilities sued** on . . . conversely it has been generally recognized that the casual presence of the corporate agent or even his conduct of a single or isolated item of activity in a state in the corporations' behalf **are not enough to subject it to suit on causes of action unconnected with the activity there.** . . . To require the corporation in such circumstances to defend the suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process." (Emphasis ours.)

In *Hanson v. Denckla, supra:*

> "The cause of action in this case is not one that arises out of an act done or a transaction consummated in a foreign state. In that respect it varies from *McGee v. International Life Insurance Company,* 355 U. S. 220, 2 L. Ed. (2d) 223 and the cases there cited."

The circumstances in *Seymour v. Parke Lavis & Co.* (First Circuit 1970), *supra,* bears remarkable similarity to these cases and there the Court concluded:

> "If the plaintiff has some attachment to the forum, or if the defendant has adopted the state as one of its major places of business, we would have

no question of the right of the state to subject the defendant to suit for unconnected causes of action. Nor would we even if the forum were not a major center of defendant's business but were nevertheless a community into whose business life the defendant had significantly entered as determined by the quality, substantiality, continuity, and systematic nature of its activities . . . When, however, defendant's only activities consist of advertising and **employing salesmen to solicit orders,** we think that fairness will not permit a state to assume jurisdiction."

423 F. (2d) at 587. (Emphasis added.)

In 2 Moore's Federal Practice, Para. 425 (5) we find:

"Based as they are on notions of fairness and reasonableness, the Supreme Court decisions do not permit a single generalization of the rule pertaining to in *personam* jurisdiction over foreign corporations. If there are substantial contacts with the state, for example, a substantial and continuing business, and if the cause of action arose out of business done in the state, jurisdiction will be sustained. If there is substantial contact in the state but the cause of action does not arise out of these contacts, jurisdiction may be sustained. If there is a minimum contact and the cause of action arises out of the contact, it will normally be fair and reasonable to sustain the jurisdiction. **If there is a minimum of contact and the cause of action does not arise out of the contact, there will normally be no basis of jurisdiction since it is difficult to establish the factors necessary to meet the fairness and reasonable test.**" (Emphasis ours.)

Finally to allow the Petitioners whose only interest in South Carolina is its long statute of limitations (6 years) and only contact with South Carolina is to bring their lawsuits for the sole purpose of availing themselves of the statute, to maintain these actions against Respondents who have practically no contact with the forum clearly violates

"the notions of fair play and justice" of *International Shoe, supra.* The Respondents had every reason to believe that when the statute of limitations had run in every jurisdiction conceivably concerned with the issues in question, they would not later be called upon to produce evidence to rebut the Petitioners allegations.

CONCLUSIONS

For the reason set out herein this Court should refuse to grant the Petitioners' Writ of *Certiorari.*

Respectfully submitted,

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